

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 2366-01
Bill No.: HB 1756
Subject: Crimes and Punishment; Health Care; Public Health
Type: Original
Date: February 19, 2002

FISCAL SUMMARY

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2003	FY 2004	FY 2005
General Revenue	(\$36,000 to Unknown)	(\$44,497 to Unknown)	(\$45,831 to Unknown)
Total Estimated Net Effect on <u>All</u> State Funds	(\$36,000 to Unknown)	(\$44,497 to Unknown)	(\$45,831 to Unknown)

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2003	FY 2004	FY 2005
None			
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2003	FY 2004	FY 2005
Local Government	(Unknown)	(Unknown)	(Unknown)

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 7 pages.

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Public Safety – State Highway Patrol** and the **Department of Mental Health** assume the proposed legislation would have no fiscal impact on their agencies.

Officials from the **Office of State Courts Administrator** assume the proposed legislation would have no fiscal impact on the courts.

Officials from the **Office of State Public Defender** assume existing staff could provide representation for those cases arising where indigent persons were charged with failure to disclose sexual contacts or failure to assist authorities in locating sexual contacts, both class D felonies. The penalties for risking the infection of aids to another has been escalated to a class B felony unless the victim contracts HIV from the contact, then the crime will be charged as a class A felony. Prostitution remains a class B misdemeanor unless the person charged knew he or she was infected with HIV, then the crime of prostitution becomes a B felony. Last FY, the State Public Defender System provided representation in 5 cases where the defendant was charged with risking another with the infection of HIV and in 67 prostitution cases. However, passage of more than one bill increasing penalties on existing crimes or creating new crimes would require the State Public Defender System to request increased appropriations to cover the cumulative cost of representing indigent persons accused in the now more serious cases or in the new additional cases.

Officials from the **Office of Prosecution Services** assume prosecutors could absorb the costs of the proposed legislation within existing resources.

Officials from the **Department of Health and Senior Services (DHSS)** assume the State Public Health Laboratory would be required to do this testing (the bill does not indicate who would incur the cost of testing which would be required to implement the law). The DHSS used the following methodology to determine costs:

- The Department of Corrections reports that an estimated 650 sexual offenders enter the prison per year. Based on the 650 convicted, it is estimated that there would be a minimum of 1,000 defendants being arrested and tested.
- Lab tests performed and cost per lab test: HIV \$7.50, Hepatitis B \$19.01, Gonorrhea/Chlamydia \$10.31, Syphilis \$6.23. Total cost of test per defendant = \$43.05.

ASSUMPTION (continued)

- Hepatitis C testing is not available through the State Public Health Laboratory. Therefore, the locals will have to secure private laboratories for Hepatitis C testing.
- Annual requests by prosecutors for DHSS records: 10 requests annually x HPR II salary (1 hour) @ \$13.00 per hour x 15 copies = \$150.00. Records consist of lab reports, disease case reports, field records, and interview records.

The DHSS estimates the cost of the proposal to be \$36,000 on FY 03, \$44,497 in FY 04, and \$45,931 in FY 05.

Officials from the **Department of Corrections (DOC)** assume they cannot predict the number of new commitments which may result from the creation and/or enhancement of the offense(s) outlined in this proposal. There is no data available on the new crimes and there were no probation openings or admissions for the crimes that would carry enhanced penalties under the proposed legislation. An increase in commitments depends on the utilization by prosecutors and the actual sentences imposed by the court.

If additional persons are sentenced to the custody of the DOC due to the provisions of this legislation, the DOC will incur a corresponding increase in operational cost either through incarceration (FY01 average of \$35.78 per inmate per day, or an annual cost of \$13,060 per inmate) or through supervision provided by the Board of Probation and Parole (FY01 average of \$3.34 per offender per day, or an annual cost of \$1,219 per offender).

The DOC is unable to determine the number of additional inmate beds that may be required as a consequence of passage of this proposal. Estimated construction cost for one new medium to maximum security inmate bed is \$55,000. Utilizing this per-bed cost provides for a conservative estimate by the DOC, as facility start-up costs are not included and entire facilities and/or housing units would have to be constructed to cover the cost of housing new commitments resulting from the cumulative effect of various new legislation, if adopted as statute.

In summary, supervision by the DOC through probation or incarceration would result in additional unknown costs to the department. Eight (8) persons would have to be incarcerated per fiscal year to exceed \$100,000 annually. The exact fiscal impact for the DOC is an unknown amount.

<u>FISCAL IMPACT - State Government</u>	FY 2003 (10 Mo.)	FY 2004	FY 2005
---	---------------------	---------	---------

GENERAL REVENUE FUND

Costs – Department of Health and Senior Services (DHSS)

Lab Tests (1,000 per year)	(\$35,875)	(\$44,342)	(\$45,672)
Requests for records (10 per year)	<u>(\$125)</u>	<u>(\$155)</u>	<u>(\$159)</u>
Total Costs – DHSS	(\$36,000)	(\$44,497)	(\$45,831)

Costs – Department of Corrections

Incarceration/Probation costs	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
-------------------------------	------------------	------------------	------------------

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>(\$36,000 to Unknown)</u>	<u>(\$44,497 to Unknown)</u>	<u>(\$45,831 to Unknown)</u>
---	---	---	---

<u>FISCAL IMPACT - Local Government</u>	FY 2003 (10 Mo.)	FY 2004	FY 2005
---	---------------------	---------	---------

Lab Testing – Hepatitis C	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
---------------------------	------------------	------------------	------------------

ESTIMATED NET EFFECT ON LOCAL GOVERNMENT	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
---	-------------------------	-------------------------	-------------------------

FISCAL IMPACT - Small Business

The proposed legislation could have a fiscal impact on small businesses who perform laboratory testing.

DESCRIPTION

The proposed legislation makes various revisions to the law requiring HIV testing of sexual offenders. In its major provisions, the proposal:

1. Allows prosecuting attorneys who are prosecuting cases involving transmission of HIV and prostitution to have access to certain confidential HIV testing information. Currently, only prosecutors who are prosecuting cases involving disclosure of confidential HIV information have access to the information;

DESCRIPTION (continued)

2. Allows prosecuting attorneys or representatives of the Department of Health and Senior Services to advise victims of sex offenses involving sexual intercourse or deviate sexual intercourse whether the defendant tested positive for HIV or other specified sexually transmitted diseases;
3. Allows the release of HIV testing information by the prosecuting attorney to the defense attorney in transmission of HIV and prostitution cases as part of discovery. It also allows the release of this information to court personnel and jurors hearing the case, but prohibits subsequent disclosure of the information;
4. Requires individuals who are infected with HIV to notify the health care provider if he or she is medically capable, or as soon as he or she becomes medically capable;
5. Makes it unlawful for a person infected with HIV to fail to advise the department of certain information about the identity of individuals the person has engaged in sexual intercourse or deviate sexual intercourse with, or to fail to comply with the department's request for assistance in contacting individuals the person has engaged in sexual intercourse or deviate sexual intercourse with in the five years preceding the infected individuals' knowledge of his or her HIV status;
6. Adds biting and other actions which cause a person's blood or bodily fluids to come into contact with another's blood or bodily fluids to the list of ways in which one can commit the crime of recklessly exposing another to HIV;
7. Adds sharing needles with another person, biting another person, and causing the exchange of blood or bodily fluids with another person by an HIV infected person who knows of his or her HIV status to the list of evidence that a person has acted recklessly in creating a risk of infecting another person with HIV;
8. Requires the department to turn over specified records about a defendant's HIV-infected status and test results to peace officers, police officers, prosecuting attorneys, and the Attorney General upon request;
9. Allows the court hearing a sex offense case that involves sexual intercourse or deviate sexual intercourse to order the offender to undergo an HIV test, pursuant to the filing of a motion by the prosecuting attorney. The results of the test must be released to the victim, the prosecuting attorney, and the defendant's attorney. The test results and the motion to obtain an HIV test must be sealed in the court's file;

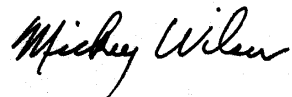
DESCRIPTION (continued)

10. Allows the penalty for prostitution to be enhanced to a class B felony if the offender knew that he or she was infected with HIV prior to performing the act of prostitution; and
11. Gives the court the discretion to allow the defendant convicted of class B misdemeanor prostitution to withdraw a guilty plea or reverse a verdict and enter a judgement of not guilty upon the defendant's successful completion of a drug and alcohol abuse treatment program. Defendants convicted of a class B felony prostitution may not withdraw their plea or have their verdict reversed, but the judge can consider the successful completion of a drug and alcohol treatment program in making sentencing determinations.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space. This legislation would not affect Total State Revenue.

SOURCES OF INFORMATION

Office of State Public Defender
Department of Health and Senior Services
Department of Public Safety
 – State Highway Patrol
Department of Mental Health
Department of Corrections
Office of Prosecution Services
Office of State Courts Administrator



Mickey Wilson, CPA
Acting Director

February 19, 2002

